

E-Filed: April 7, 2015

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

MONTEREY BAY MILITARY HOUSING,
LLC; et al.,

No. C14-03953 BLF (HRL)

Plaintiffs,

**ORDER RE: DISCOVERY DISPUTE
JOINT REPORT #6**

v.

[Re: Docket No. 125]

PINNACLE MONTEREY LLC; et al.,

Defendants.

Plaintiffs sue Defendants for “a series of systematic frauds” relating to Defendants’ management of military housing at the Presidio of Monterey and Fort Irwin. Fourth Am. Compl. ¶ 2. Pinnacle asserts that non-party Tierra Vista Communities LLC (“TVC”) manages a privatized military housing facility located in California and has obtained property and general liability insurance for the property. TVC, however, asserts that it is one part of a large family of corporate entities under the Lend Lease Americas, Inc. (“Lend Lease”) umbrella, and the property and general liability insurance coverage applicable to TVC’s and its direct affiliates’ various military housing projects exists only in the context of a global insurance program applicable to numerous affiliated military housing developments.

Defendant Pinnacle Monterey LLC, Pinnacle Irwin LLC, American Management Services California Inc., American Management Services LLC (dba Pinnacle), and Stanley Harrelson (collectively “Pinnacle” or “Defendants”) served a subpoena duces tecum on TVC. TVC objected to the subpoena on the grounds that it would be burdensome to produce documents responsive to

1 each of Pinnacle's requests. Pinnacle subsequently narrowed the scope of the subpoena to request
2 documents sufficient to show the cost of property and general liability insurance on a per-unit or per
3 \$100 of total insured value basis incurred for each of the projects defined by the subpoena.

4 In Discovery Dispute Joint Report #6, Pinnacle seeks an order compelling TVC to comply
5 with the narrowed scope of the subpoena. TVC argues that the subpoena should be quashed on the
6 grounds that the documents sought are not relevant to the issues in this action, compliance with the
7 subpoena would impose an undue burden on TVC, and compliance would require TVC to provide
8 to its direct business competitor, for no legitimate purpose, proprietary and confidential business
9 information.

10 Rule 45 of the Federal Rules of Civil Procedure authorizes the issuance of a subpoena
11 commanding a non-party to attend and testify; produce designated documents, electronically stored
12 information, or tangible things in that non-party's possession, custody or control; or permit the
13 inspection of premises. Fed. R. Civ. P. 45(a)(1)(A)(iii). The scope of discovery through a Fed. R.
14 Civ. P. 45 subpoena is the same as that applicable to Fed. R. Civ. P. 34 and the other discovery
15 rules. Fed. R. Civ. P. 45 advisory committee's note (1970).

16 Parties may obtain discovery about any nonprivileged matter that is relevant to any party's
17 claim or defense. Fed. R. Civ. P. 26(b)(1). "Relevance under Rule 26(b)(1) is construed more
18 broadly for discovery than for trial." *Truswal Sys. Corp. v. Hydro-Air Eng'g, Inc.*, 813 F.2d 1207,
19 1211 (Fed. Cir. 1987). "Relevant information need not be admissible at the trial if the discovery
20 appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P.
21 26(b)(1).

22 Discovery is not unfettered, however. A court must limit the extent or frequency of
23 discovery if it finds that (a) the discovery sought is unreasonably cumulative or duplicative or can
24 be obtained from a source that is more convenient, less burdensome or less expensive; (b) the party
25 seeking discovery has had ample opportunity to obtain the information through discovery; or (c) the
26 burden or expense of the discovery sought outweighs its likely benefit, considering the needs of the
27 case, the amount in controversy, the parties' resources, the importance of the issues at stake, and the
28 importance of the discovery in resolving those issues. Fed. R. Civ. P. 26(b)(2)(C)(i)-(iii).

1 Fed. R. Civ. P. 45(d)(3)(B) provides that the court may quash or modify a subpoena if it
2 requires: “(i) disclosing a trade secret or other confidential research, development, or commercial
3 information; or (ii) disclosing an unretained expert’s opinion or information that does not describe
4 specific occurrences in dispute and results from the expert’s study that was not requested by a
5 party.” “In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or
6 modifying a subpoena, order appearance or production under specified conditions if the serving
7 party: (i) shows a substantial need for the testimony or material that cannot be otherwise met
8 without undue hardship; and (ii) ensures that the subpoenaed person will be reasonably
9 compensated.” Fed. R. Civ. P. 45(d)(3)(C). Additionally, Fed. R. Civ. P. 45(c)(3) provides that the
10 court must quash or modify a subpoena that imposes an undue burden.

11 First, the narrowed subpoena at issue here seeks information that is not relevant or calculated
12 to lead to the discovery of admissible evidence. Lend Lease is a large military housing developer
13 with a large portfolio of nationwide military use properties of varying scopes, of which TVC’s
14 California properties are one component. All of them are insured under one program specific to
15 Lend Lease’s individualized’s global risk profile and loss history and developed over the course of
16 Lend Lease’s relationships with its various insurers. This proprietary insurance program is of a
17 different variety and scope from Defendants’ program, and based on the allegation against
18 Defendants, it is run in a different manner. Lend Lease’s program is specific to military use
19 properties only, while Defendants’ program co-mingles military and public use risks. In addition,
20 the insurance costs associated with Lend Lease’s program are limited exclusively to actual external
21 insurance costs (i.e., premiums), while Defendants’ insurance costs include internal administrative
22 fees in addition to premiums. Thus, Lend Lease’s program is not comparable to the program
23 obtained by Defendants. Dissecting this program in an attempt to establish which costs are
24 attributable, on a “per unit or per \$100 of total insured value basis” to those properties developed
25 and/or managed by TVC in California would potentially necessitate production of all documents
26 related to this program.


27 Second, the documents sought, and the information contained within, consist of proprietary
28 and confidential business information. Defendants do not dispute that the documents they seek from

1 TVC/Lend Lease contain confidential business information. Accordingly, Defendants must
2 demonstrate a substantial need for the documents that cannot otherwise be met without undue
3 hardship. Defendants have not done so here. Defendants assert that their expert “requires the
4 information sought by the Subpoena” in order to respond to the underlying expert’s report.
5 Defendants do not explain, however, why Defendants’ expert requires another developer’s insurance
6 information, which is not comparable to the insurance program obtained by Defendants that is at
7 issue here.

8 Accordingly, Pinnacle’s request for an order compelling TVC to comply with the narrowed
9 scope of the subpoena is denied. TVC’s request to quash the subpoena is granted.

10 **IT IS SO ORDERED.**

11 Dated: April 7, 2015

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14 HOWARD R. LLOYD
15 UNITED STATES MAGISTRATE JUDGE
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C14-03953 BLF (HRL) Notice will be electronically mailed to:

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